

# In the United States Court of Federal Claims

No. 03-2800C  
NOT FOR PUBLICATION  
(Filed October 13, 2005)

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**WHITE & CASE LLP,** \*  
\*  
Plaintiff, \*  
\*  
v. \*  
\*  
**THE UNITED STATES,** \*  
\*  
Defendant. \*  
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## ORDER

The Court has reviewed defendant’s Motion for Reconsideration and Clarification (“Motion”), concerning the August 1, 2005 opinion and order, and plaintiff’s opposition. Defendant has not provided any adequate basis for reconsideration of the Court’s previous decision, and this aspect of its motion is **DENIED**. Defendant merely reasserts its position that it chooses not to calculate any moiety until all brake rotor investigations are completed, and then argues that a November 1, 2005 deadline for filing an Administrative Record will require it to prematurely terminate investigations and collections. Motion at 3-8, 10.

The Court’s order was based on the assumption (necessarily indulged in the context of a motion to dismiss) that plaintiff’s allegations were true, including the claims that each separate provision of information constituted a “case” for purposes of the moiety statute; and that, at least as concerns information that has led to a recovery, ripe claims were stated. *See White & Case LLP v. United States*, 67 Fed. Cl. 164, 173 (2005). The stay of proceedings was designed to provide the government with the *opportunity* to make a formal factual determination as to whether the moiety claims pressed by plaintiff constitute one “case” for purposes of 19 U.S.C. § 1619, or several cases. *White & Case*, 67 Fed. Cl. at 174-76. If the Bureau of Customs and Border Protection (“Customs”) determined it were one case, which involved on-going collections and investigations, it could deny the claims for that reason at this time. This factual determination, it was assumed, would naturally give rise to an administrative record that could be filed with the Court. On the other hand, if Customs determined that more than one “case” were presented, it would have the opportunity to also determine if any discrete case(s) were ripe, in its judgment, for a moiety award.

The Court neither remanded the matter to Customs nor ordered the agency to perform any task. No investigation need be curtailed or collections action foregone. But since the defendant appears to be confused on this point, the Court will **GRANT** the motion to clarify what has been ordered concerning the administrative record.

Defendant appears to believe that it can postpone litigation indefinitely merely by asserting that its position, or perhaps its policy, is to treat all of the claims raised by plaintiff as constituting one on-going “case” for purposes of the moiety statute. The Court recognized that such a determination is an effective denial of an application for a moiety, and that the determination is of a factual nature. *See White & Case*, 67 Fed. Cl. at 176. Defendant has been presented with the opportunity to make the formal factual determination that only one “case” is involved, and to assemble an administrative record upon which this denial of the moiety may be reviewed for arbitrariness or lack of evidentiary support. *See id.* (citing *Doe v. United States*, 100 F.3d 1576, 1583 (Fed. Cir. 1996) and *Tyson v. United States*, 32 F. Supp. 135, 136-37 (Ct. Cl. 1940)). By setting the November 1, 2005 deadline for the filing of an administrative record, the Court did not intend to prejudge the issue of whether such a record is necessary, but merely took at face value defendant’s statements that this case should be tried upon an administrative record. *See, e.g.*, Deft.’s Opp. to Pl.’s Motion to Compel at 3 n.1; Tr. (Jan 14, 2005) at 27. The Court intended to set November 1, 2005 as the deadline for filing an administrative record *if defendant chooses to file one*.

The Court thus clarifies that if defendant is to take the position that its factual determination of the number of cases asserted should be reviewed based on an administrative record, such record must be filed by November 1, 2005. If defendant believes that a formal determination and/or the compilation of a record will require an enlargement of time, it may, of course, file a motion making this request and explaining why additional time is needed to formalize what apparently is already its position concerning the matter. On the other hand, if recourse to a formal process results in Customs deciding that discrete, separable cases are involved, some of which may be ripe for an award, it may so inform the Court and move for a reasonable enlargement of time in which to finalize the separate moiety determinations. Alternatively, it may decide not to reach a formal decision on the question of the number of cases involved, thereby requiring the Court to rule on the motions concerning discovery and privilege, and to proceed without the convenience of an administrative record (and the deference such a record facilitates).

**IT IS SO ORDERED.**

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**VICTOR J. WOLSKI**  
Judge